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Government of Saskatchewan

Annual Report 1982

Law Reform Commission of Saskatchewan

Law Reform
Commission of
Saskatchewan

Annual Report
1982

The Law Reform Commission of Saskatchewan was established by *An Act to Establish a Law Reform Commission*, proclaimed in November, 1973, and began functioning in February of 1974.

The commissioners are:

Prof. DOUGLAS A. SCHMEISER, Q.C., B.A., LL.B., LL.M., S.J.D., Chairman
Miss MARJORIE A. GERWING, Q.C., B.A., LL.B.
Mr. GORDON J. KUSKI, LL.B.
Mr. Kenneth P. R. Hodges, B.A., LL.B. is Director of Research.

Mr. Michael J. W. Finley, B.A., M.A., LL.B. is the Legal Research Officer. The secretaries are Mrs. Sandra L. Ritchie and Miss Pat Harasymchuk.

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The Commission offices are located at the Sturdy-Stone Centre, 122 Third Avenue North, Saskatoon, Saskatchewan, S7K 2H6.

Saskatchewan

Attorney General
of Saskatchewan

Legislative Building
Regina, Canada
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February 9, 1983

The Honourable C. Irwin McIntosh
Lieutenant Governor
Province of Saskatchewan

Sir:

I have the honour to present to you the 1982 Annual Report of the Law Reform Commission of Saskatchewan.

The Report describes the important programs and activities of the Commission during 1982. Many of the current projects involve matters fundamental to the legal, economic and social fabric of our Province, including the division of matrimonial property, homesteads, maintenance enforcement, illegitimacy, personal and property guardianship, protection of the mentally disordered, consumer credit, credit reporting agencies and coroners.

I am pleased to report that Professor Douglas A. Schmeiser, Q.C., of the College of Law, University of Saskatchewan was appointed Chairman of the Commission on September 22nd, 1982. He succeeds Professor Ronald C.C. Cuming, Q.C., who has returned to the University of Saskatchewan. Professor Cuming did excellent work for the Commission, particularly concerning commercial and consumer law.

The Commission continues to consist of three members. On September 22nd, 1982, Miss Marjorie A. Gerwing, Q.C. of Regina was reappointed as a Commissioner, and Mr. Gordon J. Kuski of Regina was appointed to the Commission, succeeding Mr. George J.D. Taylor, Q.C. Mr. Taylor has been a member of the Commission since its inception in 1974.

Respectfully submitted,

J. Gary Lane, Q.C.
Attorney General

Saskatchewan

Law Reform
Commission of
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February 4, 1983.

The Honourable J. Gary Lane, Q.C.,
Attorney General,
Province of Saskatchewan.

Sir:

Pursuant to section 9 of The Law Reform Commission Act, I am pleased to present the 1982 Annual Report of the Law Reform Commission of Saskatchewan.

In recent years, the Commission has concentrated its research efforts on the areas of family law, consumer and commercial law, medical-legal matters and property law. Work in these important areas is continuing. Specific statutes are being reviewed, including The Matrimonial Property Act, The Homesteads Act, The Limitation of Actions Act, The Coroners Act and The Mentally Disordered Persons Act.

The Commission has decided, however, that it would also like to participate in less extensive projects of daily concern to the practising bar, and to involve the practising bar to a greater degree in law reform. All members of the bar have been invited to suggest areas in need of reform, and the response has been excellent. We have been made aware of anomalies in many areas of the law, and have begun to research some of them, in some instances engaging the same lawyers who brought the anomalies to our attention. We hope that implementation of these smaller projects will be of more immediate benefit to the general public and to the bar.

Respectfully submitted,

D. A. Schmeiser

Douglas A. Schmeiser, Q.C.
Chairman

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Objectives of the Commission

The Law Reform Commission Act provides that:

"The commission shall take and keep under review all the law of the province, including statute law, common law and judicial decisions, with a view to its systematic development and reform, including the codification, elimination of anomalies, repeal of obsolete and unnecessary enactments, reduction in the number of separate enactments and generally the simplification and modernization of the law, and for that purpose shall:

(a) receive and consider any proposals for the reform of the law that may be made to it by the Attorney General;

(b) prepare and submit to the Attorney General from time to time programs for the examination of different branches of the law with a view to their reform and shall recommend that an agency, whether the commission or a committee thereof or other body, carry out the examination;

(c) undertake, at the request of the Attorney General or pursuant to recommendations of the commission approved by the Attorney General, the examination of particular branches of the law and the formulation, by means of draft bills or otherwise, of proposals for reform therein;

(d) enter into agreements, with the approval of the Attorney General, with other organizations for law reform for the purposes of attaining the aims of the commission." R.S.S. 1978, c. L-8, s. 6.

The Commission's role is to review provincial law and to assess criticisms of a significant nature from the general public against legislation and rules of the common law.

Topics for the Commission's research program are brought before meetings of the Commission for consideration. These topics may originate from a recommendation by the Attorney General, from the Commission and its staff, from the judiciary, from the legal profession, from other professional organizations, or from the public generally. If a proposal for law reform originates from sources other than the recommendation of the Attorney General, the Commission considers the proposal and, if it feels the proposal is one which requires research and report to the Attorney General, it will propose to the Attorney General that such research be undertaken. Once the consent of the Attorney General is obtained, a research program is instituted which culminates in a report to the Attorney General.

All research undertaken is supervised by the Chairman and Director of Research. Much of the research is done by the Commission's full-time staff. Many projects, however, require substantial outside consultation and expertise.

Consequently, the Commission relies on the academic staff of the College of Law of the University of Saskatchewan and elsewhere for research personnel. Legal practitioners also act as consultants from time to time and give to the Commission a practical assessment of possible recommendations for legislative and procedural change. The participation of practising lawyers is being facilitated through financial assistance provided by the Law Foundation of Saskatchewan.

Once the research study in a particular project is completed, the matter is placed before the Commission for discussion and consideration. The Commission may decide to issue background papers, or more likely papers in the form of tentative proposals, for circulation to the public in order to obtain criticism and comment prior to the preparation of a final report. This may entail public meetings, hearings and workshops. After public comment has been assessed, the Commission's recommendations are embodied in a final report to the Attorney General. This report may contain general recommendations, specific legislation or drafting instructions suggesting the form of legislation which will best implement the recommendations of the final report.

Description of the Programs and Activities carried out during 1982

The programs and activities carried out during 1982 to a large extent are a continuation of projects commenced earlier. Some of the projects are extensive in scope and involve research in a number of areas of law.

1. Family Law Project

The Commission, with the consent of the Attorney General, initiated a research project on family law in June of 1974.

In 1974 the Commission issued a background paper entitled "Family Maintenance Between Husband and Wife". Shortly thereafter a background paper entitled "Children's Maintenance" was released.

Two papers were completed in 1979: (1) "Tentative Proposals for Custody Law Reform, Part I: Substantive Law", and (2) "Tentative Proposals Relating to the Civil Rights of Children". A third paper entitled "Tentative Proposals for Custody Law Reform, Part II: Procedures and Support Services" was released in 1980. Based on these Tentative Proposals, a final report to the Attorney General entitled "Proposals on Custody, Parental Guardianship and the Civil Rights of Minors" was issued in December, 1981.

In the area of *The Married Persons' Property Act* a report entitled "Tentative Proposals for an Equality of Status of Married Persons Act" was issued in May, 1981 and a final report was released in May, 1982.

Research in the area of maintenance procedures was completed and a report dealing with Maintenance Enforcement was released in March, 1982.

Ms Susan Campbell completed a draft paper on illegitimacy. This paper has not yet been considered by the Commission.

The Commission is now reviewing *The Matrimonial Property Act* which came into force on January 1, 1980, along with the relationship of that *Act* and *The Homesteads Act* as well as *The Dependants' Relief Act* and *The Intestate Succession Act*. It is expected that a report by way of tentative proposals will be released sometime in 1983.

2. Consumer Credit Project

The study of consumer credit law in Saskatchewan and proposals for reform of it is a part of the overall study of personal property security law in Saskatchewan. The Commission decided that proposals for the reform of basic chattel security law should be developed first, since the structure and terminology of a totally reformed personal property security law system would necessarily be part of the reform of consumer credit law.

Pursuant to this approach, a final report entitled "Proposals for a Saskatchewan Personal Property Security Act" was issued in July 1977. *The Personal Property Security Act* which stems from the proposals was enacted by the Legislature in 1980 and came into force on May 1, 1981.

The Consumer Credit Project is well underway and the following paper was released in 1980: "Tentative Proposals for a Consumer Credit Act, Part I: Background and Underlying Considerations, Part II: Statistics". A second paper entitled "Tentative Proposals for a Consumer Credit Act, Part III: Secured Consumer Credit Transactions, Summary of Recommendations" was issued in May, 1981. Further research is presently being considered for the following areas:

- Credit Grantor Responsibility for Defects in Merchants' Performance Obligations;
- Extra-Judicial Debt Collection Practices;
- Credit Insurance;
- Enforcement of Credit Consumer Rights;
- Disclosure;
- Credit Reporting;
- Discrimination in Credit Granting;
- Consumer Education.

As the study progresses, it may be necessary to add to this list or consolidate two or more items into a single paper.

Professor Ronald C. C. Cuming, is in charge of this project and has been continuing work thereon throughout 1982. He was assisted by Professor Margaret Crowle, College of Home Economics, University of Saskatchewan, Ms Susan Campbell and Mr. Ted LeValliant.

3. Provincial Offences Project

A study of the doctrine of strict liability has been completed and a report entitled "Tentative Proposals for Defences to Provincial Offences" was released early in 1981. The final report which was to have been forwarded to the Attorney General during the first half of 1982, was postponed pending consultations with the Alberta Institute of Law Research and Reform.

4. Medical-Legal Project

A report dealing with the legal status of the dependent adult, entitled "Tentative Proposals for a Guardianship Act, Part I: Personal Guardianship" was released in January, 1981. There has been a considerable amount of response from the general public and in particular, interest has been shown in the report by the Saskatchewan Association for the Mentally Retarded. The final report will be released during the first half of 1983.

"Tentative Proposals for a Human Artificial Insemination Act" were released in November 1981. There have been a number of meetings of interested groups to discuss the Tentative Proposals. Further meetings, in particular with the medical community, will take place in 1983.

Following a study of the law governing civil commitment, "Tentative Proposals for a Compulsory Mental Health Care Act" were released late in 1981. Meetings with representatives of the Saskatchewan Medical Association and the College of Physicians and Surgeons are taking place and meetings with other interested groups will be arranged in 1983.

5. Administrative Law Project

Preliminary research was done on this project during the summer of 1978 on (a) Statutory Powers of Decision in the Licensing/Inspection Category of the Statutes of Saskatchewan, and (b) A Review of Benefit/Compensation Statutes.

Ms Donna Greschner was engaged as consultant on the project in August of 1980 and worked on the areas of administrative procedures and remedies. Work on the project is in abeyance until the services of another consultant have been engaged.

6. The English Statutes Project

This project involves consideration of the statute laws of England which are in force in this province. Too often lawyers are faced with the problem of determining whether or not an ancient English statute is or is not law in Saskatchewan. The British have been pruning and tidying their statutes for almost a century and in the interests of greater certainty, it is time for the common law provinces, including Saskatchewan, to put their own houses in order. Dr. Winston McCalla, formerly of the College of Law, University of Saskatchewan, was acting as consultant on the project. In 1982 further work was carried on by Mr. Allan Perry who was with the Commission during the summer months as well as by other members of the Commission staff.

7. The Limitation of Actions Act Project

This project involves major policy issues including mandatory notices of claims within specific periods of time, commencing actions within specific periods of time and the categorization of various actions to determine the appropriate limitation period.

Much preliminary research was completed by a student in the summer of 1979. A list of the limitation periods to be found in the Statutes of Saskatchewan prepared for this project was published in the *Saskatchewan Law Review* Vol. 45 No. 1 p. 103 and this has been of assistance to practising members of the bar.

A short report entitled "Tentative Proposals for Changes in Limitations Legislation, Part I: The Effect of Limitations on Title to Real Property" was released in July, 1981. Since then, Mr. Jim Russell has been working on the project and a further report is expected to be released in 1983.

8. Frustrated Contracts Project

Saskatchewan is one of the few provinces that does not have legislation which regulates the rights of parties in cases where a frustrating event prevents or substantially affects performance of a contract. The common law rules dealing with frustration are generally unpredictable and unfair.

The Commission decided in 1979 to undertake a study of this area of law. The project consists of the following parts:

(a) An analysis of the present common law of Saskatchewan applicable to frustration of contracts. This part will illustrate and discuss all the problems which have been covered by the frustrated contracts legislation.

(b) An analysis of the common law and statutory provisions applicable to the frustration of contracts in the United States and the manner in which they deal with the problems which have been subjected to statutory regulation in Commonwealth jurisdictions.

Under heading (a) and (b) two types of issues will be dealt with:

(i) the circumstances in which the contract is deemed to be frustrated.
(ii) the legal effects of frustration.

(c) Reasons for legislation. This part will analyze the desirability of passing an Act regulating the substantive and/or the remedial law of frustration.

(d) Evaluation of the different statutes enacted elsewhere and their effect on the common law. This part will also contain a summary of recommendations and a proposed statute.

Professor Louis J. Romero, College of Law, University of Saskatchewan, is acting as the consultant on the project. It is expected that a paper will be available for consideration by the Commission during the first half of 1983.

9. **Sale of Goods Act Project**

Saskatchewan's sale of goods law like that of all other common law provinces in Canada, is based almost entirely on the English *Sale of Goods Act* of 1893. While some areas of sales law have been subject to special legislative measures, the general law of sales has never been revised in Saskatchewan since its enactment. Veneration of nineteenth century English sales law by Canadians has not been shared by the English. Their statute has been amended four times. It would be inaccurate to conclude that existing sales law is totally out of touch with the realities of modern commercial activity. The basic concepts of the 1893 *Act* remain relevant. Judicial development of sales law has been substantial over the years and generally has taken account of fundamental changes in sales practices. However, a strong case can be made for recodification and modernization of Canadian sales law.

In 1979, the Ontario Law Reform Commission released an extensive report on sale of goods law containing recommendations for extensive revision of the Ontario *Sale of Goods Act*. At the August meeting of the Uniform Law Conference held at Saskatoon, Saskatchewan, a motion was passed providing for the convening of a committee to examine the Ontario report and general sales law with a view to developing a Uniform Sale of Goods Act for all provinces in Canada.

In view of the fact that work in the area is to be carried out on a national level with the opportunity for co-operation among law reform agencies, the Commission decided that it should participate in the joint project under the auspices of the Uniform Law Conference.

The Uniform Law Conference Committee met regularly throughout 1980 and early 1981. Professor Cuming represented the Commission at these meetings and proposed substantial amendments to the Ontario Law Reform Commission Draft Act. The Committee reported to the Uniform Law Conference in August of 1981 and its report containing a uniform draft act was accepted.

Professor Ronald C. C. Cuming has agreed to continue the work on this project.

10. **Products Liability Project**

The Saskatchewan *Consumer Products Warranties Act* provides a regime of "strict liability" for consumer products. In other words, the *Act* provides recovery for loss resulting from defects in consumer products even though the supplier is not negligent in placing the product on the market. However, the *Act* does not apply to a situation where the product which has resulted in loss or injury is not a "consumer product" within the meaning of the *Act* or where the consumer product has been obtained for purposes of resale or for use in a business. For example, if a vehicle or a piece of equipment was purchased for use in business and as a result of a defect in it a person is injured, liability for the defect would have to be established under the law of negligence. Of course, in any action involving the liability, the nature of the proceedings, the burden of proof and the extent of recovery would be different from what it would be if *The Consumer Products Warranties Act* applied. Generally, the injured person would be in a much less advantageous position than would be a person injured as a result of a defect in a consumer product.

The Canadian law of tort has been very slow to accept "strict liability" as a basis for liability in cases of defective products, although in some circumstances our law has moved toward "strict liability" as a basis for liability in cases of defective products, through the use of the doctrine of *res ipsa loquitur*. By contrast, courts in the United States jurisdictions have rejected negligence and have developed "strict liability" as a basis for compensation of persons injured by defective goods. There is little indication that Canadian courts are yet prepared to follow the American lead.

However, there is a very strong undercurrent of dissatisfaction with existing Canadian law of negligence. Recently, the Ontario Law Reform Commission published a report on products liability which recommended a modified strict liability scheme to be implemented by legislation.

It is the conclusion of the Law Reform Commission of Saskatchewan that the time has come to "rationalize" the law of Saskatchewan so as to ensure that the likelihood of recovery for loss resulting from defective products does not depend upon the almost fortuitous event that the product causing the injury was sold under a transaction to which *The Consumer Products Warranties Act* applies.

A considerable amount of work was done during 1981. Professor Ronald C. C. Cuming has agreed to continue the work on this project.

11. **Guest Passenger Legislation**

The owners and drivers of motor vehicles are ordinarily liable for injury caused by their negligence in highway traffic accidents. In 1936, however, the Saskatchewan *Vehicles Act* was amended to limit the right of gratuitous passengers to cover damages from the owners and drivers of vehicles in which they were carried to those cases where there was gross negligence or wilful and wanton misconduct on the part of the driver. Law Reform Commissions in a number of provinces have recommended that the ordinary standard of care should apply to claims for bodily injuries by passengers. Professor Ronald Fritz of the College of Law, University of Saskatchewan, has prepared a draft paper which is now being put into Tentative Proposals form by the Commission staff.

12. **Real Property Law**

The Commission is planning a major research project on the real property law of Saskatchewan. Its scope and format have yet to be determined. It has been decided that the best way to proceed with the project is to identify a few areas of real property which are a matter of immediate concern. Two areas so identified are:

(1) the need for a *Quieting of Title Act*;

(2) foreclosure of mortgages and charges against land and cancellation of agreements for sale (including *The Land Contracts (Actions) Act*).

Mr. Donald Purich, presently Director of the Native Law Centre, prepared a paper on the need for a *Quieting of Title Act*. The Commission came to the conclusion that with changes in the limitation periods governing titles, there was no need for such an Act. These changes were put forward in the Commission's report entitled, "Tentative Proposals for Changes in Limitations Legislation, Part I: The Effect of Limitations on Title to Real Property", issued as part of its Limitations of Actions Act Project in July, 1981.

A draft paper covering security interests in land has been prepared by the Commission staff and will be considered by the Commission.

13. **The Land Titles Act Project**

The Commission decided during the latter part of 1981 to undertake a fundamental review of *The Land Titles Act*. Particular attention will be paid to the machinery of the land titles system, the function of the registrar, the forms described by the *Act*, the effect of registration, transfers, mortgages, leases and caveats with or without supporting documents, obsolete or what may be obsolete sections as well as the relationship of other statutes with *The Land Titles Act* such as *The Tax Enforcement Act*, *The Mineral Taxation Act* and *The Planning and Development Act*. This project is being carried on with representatives from Alberta, the Yukon, the Northwest Territories and others. Some of the fundamental principles underlining the Torrens system were discussed at a meeting held in Edmonton in December of 1981, and it is expected that there will be further meetings in this regard. In the meantime, background research will be carried on throughout 1983.

14. **Review of** *The Coroners Act*

In response to suggestions received from a number of legal practitioners in Saskatchewan, the Commission decided to undertake a review of *The Coroners Act*. Some question the usefulness of the inquest in modern society; others are concerned about specific matters such as:

(1) jurisdiction and powers of coroners;

(2) the coroner's absolute discretion as to who shall be called as witnesses and who shall be given standing;

(3) the development of a type of professional jury rather than a jury picked at random;

(4) the right to counsel at an inquest;

(5) the right to be heard;

(6) the coroner's power to commit for contempt;

(7) questions of evidence such as self-incrimination and compellability;

(8) the crown attorney's role;

(9) the authority of the Attorney General to stay or to permit an inquest to proceed in the face of criminal charges;

(10) the effectiveness of recommendations made by a coroner's jury;

(11) quashing an inquest.

A paper entitled "Death Investigation and the Coroner System in Saskatchewan" was prepared by Mr. Eric Cline when he was a member of the Commission staff. He has now been engaged as a consultant to prepare a draft act and complete the project.

15. **New Home Warranties**

Many Saskatchewan residents buy newly constructed houses for use as family residences. However, the sale of houses by model and the growing specialization in components such as air conditioning and heating systems, have made it much more difficult for consumers to ensure that they are obtaining a building which meets certain basic standards of durability and safety. Unlike the purchaser of consumer goods, the purchaser of a new home in Saskatchewan is forced to rely substantially on common law. It is somewhat anomalous that the purchaser of a small appliance such as a toaster obtains the full protection afforded by the warranty provisions of *The Consumer Products Warranties Act*, whereas the purchaser of a house which has a much greater value receives no similar statutory protection and very little protection under the common law. At common law, in the absence of an express statement by the builder, implied warranties as to fitness of habitation or quality or workmanship and materials only apply if the house is not yet completed. If it is completed, the doctrine of *caveat emptor*, long since abolished in the area of sale of goods, still applies.

The deficiencies in the common law were recognized in Ontario, and a *New Home Warranties Act* was passed in 1967. The Commission has been exploring the feasibility of a study which would lead to recommendations for legislation providing purchasers of new homes in Saskatchewan with an adequate measure of legal protection against construction and material deficiencies and which would bring the law applicable to the sale and purchase of new homes more in line with that applicable to the sale and purchase of consumer goods. However the project is in abeyance until the services of a consultant are obtained.

16. **The Enforcement of Money Judgments**

The law of Saskatchewan dealing with the enforcement of money judgments is very much in need of modernization, consolidation and rationalization. Work in this area of the law which is large and complex will be undertaken if the services of a consultant can be obtained.

17. **The Guardianship Act: Part II: Property Guardianship**

The Commisson has engaged the services of a consultant, Mr. Jim Russell to undertake a study of the law governing guardianship of the property of mentally incapacitated persons. Existing legislation is contained in several statutes such as *The Mentally Disordered Persons Act*, *The Administration of Estates of Mentally Disordered Persons Act*, *The Mental Health Act* and *The Trustee Act*. The study will include a detailed review of the provisions of *The Mentally Disordered Persons Act* which in some aspects are out of date. It is expected that a paper will be available for consideration by the Commission early in 1983 and that Tentative Proposals will be published later in the year.

18. **Costs of Accused on Acquittal**

A considerable amount of background research has been done, and a draft paper was prepared by a consultant in 1980. It is possible that a paper may be ready for publication in 1983, depending on research resources.

19. **Other Activities**

On occasion, representatives of the Commission have met with or made presentations to public organizations, service groups and others, and have explained the role of law reform to students. When reports are released by way of tentative proposals, press releases are issued, press conferences held and appearances made on radio and television. While law reform often is a highly technical matter, law does not operate in a vacuum and every effort is made to keep the general public fully informed of the Commission's activities. The commission and its staff is always receptive to comments from organizations and members of the public.

Members of the Bar have been invited to suggest areas in need of reform, and have brought to the attention of the Commission many difficulties encountered in everyday practice. The Commission is attempting to involve the practising Bar to a greater degree in law reform, and has undertaken to deal with several smaller practice oriented problems, in some instances engaging the same lawyers who brought the anomalies to our attention.

Final Report to the Attorney General in 1982

Proposals for an Equality of Status of Married Persons Act

Although the status of women in law has been greatly enhanced in Saskatchewan, there are still anomalies, obsolete and unnecessary enactments as well as common law rules which should be altered or repealed. Consequently, the Commission recommended simplification and modernization of the law by a new enactment as follows:

The Equality of Status of Married Persons Act

Equality of status 1. (1) A married person has legal capacity for all purposes and in all respects as if such person were an unmarried person.

(2) For all purposes of the law of Saskatchewan, a married person has a legal personality that is independent, separate and distinct from that of his or her spouse.

Comment

This section is intended to establish, in clear and exhaustive terms, the equality of status of married persons, both with one another, and with unmarried persons. Strictly speaking, subsections (1) and (2) are somewhat redundant. Limitations on the capacity of married women arise from the doctrine of unity of personality of husband and wife. Therefore, subsection (1) implies subsection (2), and vice versa. Both subsections have been included, however, for clarity.

The approach of section 1 of *The Equality of Status of Married Persons Act* differs from the approach of *The Married Persons' Property Act* in that it abolishes entirely the basis which existed at common law for the disabilities placed upon married women. *The Married Persons' Property Act* approached that result by enacting a series of exceptions to the common law rule. Because of the difference in approach, most of the specific provisions contained in *The Married Persons' Property Act* do not need to be reproduced in *The Equality of Status of Married Persons Act.*

Interspousal tort 2. A husband and wife each have a right of action in tort against the other as if they were not married.

Comment

This section repeats the principal recommendation made in the Commission's report, *Proposals for Reform of the Law Affecting Liability Between Husband and Wife and Related Insurance Contracts.* The consequential amendments recommended in that report should be adopted if this proposal is enacted.

Domicile 3. (1) The same rule shall be applied to determine the domicile of a married woman as for a married man.

(2) Subject to subsection (3), a child who is a minor,

(a) takes the domicile of his or her parents, where both parents have a common domicile;

(b) takes the domicile of the parent with whom the child habitually resides, where the child resides with one parent only;

(c) takes the domicile of the father, where the domicile of the child cannot be determined under clause (a) or (b); or

(d) takes the domicile of a mother, where the domicile of the child cannot be determined under clause (c)

(3) The domicile of a minor who is or has been a spouse shall be determined in the same manner as if the minor were of full age.

Comment

This section is intended to explicitly abolish the common law "dependent domicile" rule which assigned to a married woman the domicile of her husband. Because abolition of that rule has consequences for determination of the domicile of infants, a statutory rule for determination of the domicile of infants has also been included.

Restrictions on anticipation or alienation

4. Section 1 does not apply to interfere with or render inoperative any restriction upon anticipation or alienation attached to the enjoyment of any property by virtue of an instrument executed before the *Act* comes into force and for that purpose.

(a) a provision contained in an instrument made in exercise of a special power of appointment shall be deemed to be contained in that instrument in which the power was created; and

(b) the will of a testator shall be deemed to be an instrument executed on the day of his death.

Comment

By implication, section 1 would render inoperative any restriction upon anticipation or alienation created when property is held in trust for a married woman. Such restraints are an archaic remnant of equity's effort during the nineteenth century to protect married women from themselves. Section 5 is included in the proposed *Act* as a transitional provision giving some effect to restraints created before the *Act* comes into force which may have been predicated on the assumption that a restraint contained in the trust document would be effective. Such restraints are not, in any event, commonly used in Saskatchewan or elsewhere at the present time.

Married woman as agent of husband

5. A married woman shall not, merely because of her status, have authority to pledge her husband's credit for necessaries when she is living apart from her husband by reason of his desertion or otherwise, or to act as his agent for the purchase of necessaries.

Comment

This section explicitly abolishes a married woman's authority to pledge her husband's credit for necessaries, or to act as his agent for purchase of necessaries without the authorization or acquiescence of her husband. It is not intended to prevent a married woman from acting as her husband's agent, or from being found to be her husband's agent by estoppel, in cases in which any agency relationship might exist between unmarried persons.

Alienation of affections and loss of consortium

6. No action shall be brought for criminal conversation, enticement, harbouring, or loss of consortium of a spouse, or for damages resulting from adultery.

Comment

This provision incorporates the substance of section 40 of *The Queen's Bench Act*, which abolished actions for criminal conversation, and abolishes other tort actions based on loss of the services or consortium of a wife.

Enactments repealed

7. *The Married Persons' Property Act* and section 40 of *The Queen's Bench Act* are repealed.

Comment

Section 40 of *The Queen's Bench Act*, as noted above, is incorporated in this *Act*.

Plans for the Year 1983

1. **Family Law Project**

Tentative Proposals arising out of the review of *The Matrimonial Property Act* will be released in 1983.

2. **Consumer Credit Project**

Work will continue on this project. It is expected that tentative proposals will be released in 1983 dealing with the cost of credit disclosure, credit insurance, consumer education and credit grantors' liability for merchants' default in performance.

3. **Provincial Offences Project**

A Final Report entitled "Proposals for Defences to Provincial Offences" should be released in 1983, although the Commission is waiting until after it has had an opportunity of considering proposals in the area now being formulated by the Alberta Institute of Law Research and Reform.

4. **Medical-Legal Project**

The Final Report entitled "Proposals for a Guardianship Act, Part I: Personal Guardianship" will be released in February of 1983.

5. **Administrative Law Project**

This project is in abeyance until the services of another consultant have been secured.

6. **English Statutes Project**

It is possible that a paper dealing with old English statutes in force in the province will be available in 1983 for study and comments by members of the legal profession.

7. **The Limitation of Actions Act Project**

Tentative Proposals for reform in the area of limitations will be released in 1983.

8. **Frustrated Contracts Project**

It is expected that a paper will be released during 1983.

9. **Sale of Goods Project**

The Uniform Law Conference *Uniform Sale of Goods Act* will be studied to determine its appropriateness for enactment in Saskatchewan.

10. **Products Liability Project**

It is expected that further work will be undertaken in this project during 1983.

11. **Guest Passenger Legislation**

A paper dealing with guest passenger legislation will be released in 1983.

12. **Real Property Law Project**

There may be a paper dealing with security interests sometime in 1983.

13. **The Land Titles Act Project**

Background research will continue on this project throughout 1983.

14. **Review of The Coroners Act**

It is expected that a paper will be released in 1983.

15. **New Home Warranties**

This project is in abeyance at the present time.

16. **The Enforcement of Money Judgments**

This project is in abeyance at the present time.

17. **Property Guardianship**

"Tentative Proposals for a Guardianship Act, Part II: Property Guardianship" will be released later on in the year.

18. **Costs of Accused on Acquittal**

It is possible that a paper will be released in 1983.

19. **Other Activities**

The Commission has undertaken a number of smaller practice-oriented projects, and it is expected that recommendations will be made to the Attorney General dealing with *The Automobile Accident Insurance Act* (sections 78 & 79), *The Tax Enforcement Act* (section 31), the ademption rule, post-judgment interest as well as other matters.

Financial Information

Budget for fiscal year April 1, 1982 to March 31, 1983.

Appropriation:

Personal Services	$181,160
Other Expenses	126,000
	$307,160

The Law Foundation of Saskatchewan has been providing funds for specific programs of law reform at the request of the Commission. The following projects have been or are being supported financially by the Foundation: Tax and Comparative Law Implications relating to matrimonial property; some other aspects of family law including Illegitimacy and review of *The Intestate Succession Act* and *The Dependants' Relief Act*; Secured Personal Property; Medical-Legal — Artificial Insemination, Civil Commitment as well as Committal Under a Lieutenant Governor's Warrant; Provincial Offences: Tentative Recommendations for Reform; Consumer Credit; Occupiers' Liability; A Review of *The Limitation of Actions Act*; The English Statutes Project; Frustrated Contracts; Administrative Law Project; Guest Passenger Legislation; Real Property Law; Products Liability Project; *The Homesteads Act* Review; *The Coroners Act* Review; New Home Warranties; The Enforcement of Money Judgments; and Property Guardianship.

The Commission wishes to take this opportunity to express its appreciation to the Law Foundation of Saskatchewan for its most important financial assistance.

Organizational Chart